

REFERENCE TITLE: exempt wells; active management areas

State of Arizona
House of Representatives
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HB 2310

Introduced by
Representatives Sinema, Ableser: Campbell CH, Gallardo, Lopes, Lujan,
Meza, Miranda B, Ulmer

AN ACT

AMENDING SECTIONS 45-454, 45-604, 45-632 AND 45-634, ARIZONA REVISED
STATUTES; RELATING TO WATERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-454, Arizona Revised Statutes, is amended to
3 read:

4 45-454. Exemption of small non-irrigation wells: definitions

5 A. Withdrawals of groundwater for non-irrigation uses from wells
6 having a pump with a maximum capacity of not more than thirty-five gallons
7 per minute which were drilled before April 28, 1983 or which were drilled
8 after April 28, 1983 pursuant to a notice of intention to drill which was on
9 file with the department on such date are exempt from this chapter, except
10 that:

11 1. Wells drilled before June 12, 1980 which are not abandoned or
12 capped or wells which were not completed on June 12, 1980 but for which a
13 notice of intention to drill was on file with the Arizona water commission on
14 such date are subject to subsections ~~F, J, and K~~ AND L of this section and
15 must be registered pursuant to section 45-593. If two or more wells in an
16 active management area are exempt under this paragraph and are used to serve
17 the same non-irrigation use at the same location, the aggregate quantity of
18 groundwater withdrawn from the wells shall not exceed fifty-six acre-feet per
19 year.

20 2. Wells drilled between June 12, 1980 and April 28, 1983, except as
21 provided in paragraph 1 of this subsection, and wells drilled after April 28,
22 1983 pursuant to a notice of intention to drill which was on file with the
23 department on April 28, 1983, are subject to subsections ~~F, H, G, I, and J~~
24 AND K of this section.

25 3. BEGINNING JANUARY 1, 2010, IN AN ACTIVE MANAGEMENT AREA, WELLS
26 SHALL NOT WITHDRAW MORE THAN FOUR ACRE-FEET PER YEAR FOR NON-IRRIGATION USE.

27 B. Withdrawals of groundwater for non-irrigation uses from wells
28 having a pump with a maximum capacity of not more than thirty-five gallons
29 per minute drilled on or after April 28, 1983, except wells drilled after
30 April 28, 1983 pursuant to a notice of intention to drill which was on file
31 with the department on such date, are exempt from this chapter, except that:

32 1. Such wells are subject to subsections ~~F~~ G through ~~J~~ K of this
33 section.

34 2. In an active management area, other than a subsequent active
35 management area designated for a portion of a groundwater basin in the
36 regional aquifer systems of northern Arizona, withdrawals of groundwater from
37 such wells for non-irrigation uses other than domestic purposes and stock
38 watering shall not exceed ten acre-feet per year.

39 3. In a subsequent active management area that is designated for a
40 portion of a groundwater basin in the regional aquifer systems of northern
41 Arizona, groundwater withdrawn from such wells may be used only for domestic
42 purposes and stock watering.

43 4. BEGINNING JANUARY 1, 2010, IN AN ACTIVE MANAGEMENT AREA, WELLS
44 SHALL NOT WITHDRAW MORE THAN FOUR ACRE-FEET PER YEAR FOR NON-IRRIGATION USE.

C. On or after January 1, 2006, an exempt well otherwise allowed by this section may not be drilled on land if any part of the land is within one hundred feet of the operating water distribution system of a municipal provider with an assured water supply designation within the boundaries of an active management area established on or before July 1, 1994, as shown on a digitized service area map provided to the director by the municipal provider and updated by the municipal provider as specified by the director.

D. On request from the owner of the land on which an exempt well is prohibited pursuant to subsection C of this section on a form prescribed by the director, the director shall issue an exemption from subsection C of this section if the landowner demonstrates to the satisfaction of the director that any of the following applies:

1. The landowner submitted a written request for service to the municipal provider that operates the distribution system and the municipal provider did not provide written verification to the landowner within thirty calendar days after receipt of the request that water service is available to the landowner after payment of any applicable fee to the municipal provider.

2. The total capital cost and fees for connecting to the operating water distribution system exceed the total capital cost and fees for drilling and fully equipping an exempt well.

3. If the applicant must obtain an easement across other land to connect to the water distribution system of the municipal provider, the applicant sent the owner of the land a request for the easement by certified mail, return receipt requested, and either the applicant did not receive a response to the request within thirty calendar days of mailing the request or the request was denied.

4. The landowner does not qualify for an exemption pursuant to ~~paragraphs~~ PARAGRAPH 1, 2 or 3 of this subsection and the landowner provides written verification from the municipal provider that the landowner shall not receive or request water service from the municipal provider while the exempt well is operational. The exemption for that well is revoked if the landowner or any subsequent landowner receives water service from the municipal provider. In determining whether to approve or reject a permit application filed under section 45-599, the director shall not consider any impacts the proposed well may have on an exempt well drilled pursuant to this paragraph.

E. This section does not prohibit a property owner, after January 1, 2006, from drilling a replacement exempt well for a lawful exempt well if the replacement well does not increase the total number of operable exempt wells on the applicant's land.

F. A remediation well drilled for the purpose of remediating groundwater is exempt from this section if it meets one of the following:

1. The remediation well is for an approved department of environmental quality or United States environmental protection agency remediation program.

2. A registered geologist certifies that the remediation well is for the purpose of remediation.

1 G. A person shall file a notice of intention to drill with the
2 director pursuant to section 45-596 before drilling an exempt well or causing
3 an exempt well to be drilled.

4 H. The registered well owner shall file a completion report pursuant
5 to section 45-600, subsection B.

6 I. In an active management area only one exempt well may be drilled or
7 used to serve the same non-irrigation use at the same location, except that a
8 person may drill or use a second exempt well to serve the same non-irrigation
9 use at the same location if the director determines that all of the following
10 apply:

11 1. Because of its location, the first exempt well is not capable of
12 consistently producing more than three gallons per minute of groundwater when
13 equipped with a pump with a maximum capacity of thirty-five gallons per
14 minute.

15 2. The second exempt well is located on the same parcel of land as the
16 first exempt well, the parcel of land is at least one acre in size, all
17 groundwater withdrawn from both exempt wells is used on that parcel of land
18 and there are no other exempt wells on that parcel of land.

19 3. Combined withdrawals from both wells do not exceed ~~five~~ FOUR
20 acre-feet per year.

21 4. If the second exempt well is drilled after January 1, 2000, the
22 county health authority for the county in which the well is located or any
23 other local health authority that controls the installation of septic tanks
24 or sewer systems in the county has approved the location of the well in
25 writing after physically inspecting the well site.

26 5. Use of two wells for the same non-irrigation use at the same
27 location is not contrary to the health and welfare of the public.

28 J. An exempt well is subject to sections 45-594 and 45-595.

29 K. Groundwater withdrawn from an exempt well may be transported only
30 pursuant to articles 8 and 8.1 of this chapter.

31 L. A person who owns land from which exempt withdrawals were being
32 made as of the date of the designation of the active management area is not
33 eligible for a certificate of grandfathered right for a type 2 non-irrigation
34 use for such withdrawals.

35 M. For the purposes of this section:

36 1. "Domestic purposes" means uses related to the supply, service and
37 activities of households and private residences and includes the application
38 of water to less than two acres of land to produce plants or parts of plants
39 for sale or human consumption, or for use as feed for livestock, range
40 livestock or poultry, as such terms are defined in section 3-1201.

41 2. "Municipal provider" means a city, town, private water company or
42 irrigation district that supplies water for non-irrigation use.

43 3. "Stock watering" means the watering of livestock, range livestock
44 or poultry, as such terms are defined in section 3-1201.

1 Sec. 2. Section 45-604, Arizona Revised Statutes, is amended to read:
2 45-604. Water measuring devices

3 A. Except as provided in subsections B, C and D of this section, THE
4 FOLLOWING PERSONS SHALL USE A WATER MEASURING DEVICE APPROVED BY THE
5 DIRECTOR:

6 1. A person who withdraws groundwater from a nonexempt well in an
7 active management area or an irrigation non-expansion area. ~~,-~~

8 2. A person who withdraws water from a non-exempt well in the Santa
9 Cruz active management area. ~~or~~

10 3. A person who withdraws groundwater for transportation to an initial
11 active management area pursuant to article 8.1 of this chapter ~~shall use a~~
12 ~~water measuring device approved by the director.~~

13 4. BEGINNING JANUARY 1, 2010, A PERSON WHO WITHDRAWS WATER FROM ANY
14 WELL IN AN ACTIVE MANAGEMENT AREA. THE DEPARTMENT SHALL PROVIDE NOTICE OF
15 THE WATER MEASURING DEVICE REQUIREMENT BEFORE THAT DATE.

16 B. A person who holds a type 2 non-irrigation grandfathered right or a
17 groundwater withdrawal permit in the amount of ten or fewer acre-feet per
18 year is not required to use a water measuring device to measure withdrawals
19 pursuant to that grandfathered right or groundwater withdrawal permit unless
20 the person holds more than one such right or permit in the aggregate amount
21 of more than ten acre-feet per year and withdraws more than ten acre-feet of
22 groundwater per year pursuant to those rights or permits from one well.

23 C. In an irrigation non-expansion area:

24 1. A person who withdraws ten or fewer acre-feet of groundwater per
25 year from a non-exempt well for a non-irrigation use is not required to use a
26 water measuring device to measure withdrawals from that well.

27 2. A person who withdraws groundwater from a non-exempt well for an
28 irrigation use is not required to use a water measuring device to measure
29 withdrawals from that well if both of the following apply:

30 (a) Groundwater withdrawn from the well for an irrigation use is used
31 only on land that is owned by a person who has the right under section 45-437
32 to irrigate ten or fewer contiguous acres at the place of the use.

33 (b) Groundwater withdrawn from the well is not used on land that is
34 part of an integrated farming operation.

35 D. In an active management area, a person, other than an irrigation
36 district, who withdraws groundwater from a non-exempt well for use pursuant
37 to an irrigation grandfathered right that is appurtenant to ten or fewer
38 irrigation acres is not required to use a water measuring device to measure
39 withdrawals from that well unless groundwater withdrawn from the well is also
40 used pursuant to either a service area right pursuant to article 6 of this
41 chapter or a grandfathered groundwater right other than an irrigation
42 grandfathered right that is appurtenant to irrigation acres that are exempt
43 from irrigation water duties pursuant to section 45-563.02.

44 E. The director shall adopt rules setting forth the requirements and
45 specifications for water measuring devices.

Sec. 3. Section 45-632, Arizona Revised Statutes, is amended to read:

45-632. Records and reports of groundwater pumping.
transportation and use; penalty

A. Each person who is required to file an annual report under this section or who files an annual report under subsection E of this section shall maintain current accurate records of the person's withdrawals, transportation, deliveries and use of groundwater and, in the Santa Cruz active management area, current accurate records of the person's withdrawals, deliveries and use of all water withdrawn from a well, as prescribed by the director under subsection P of this section.

B. Except as provided in subsections C and D of this section, an annual report shall be filed with the director by each person who:

1. Owns or leases a right under this chapter to withdraw, receive or use groundwater in an active management area, unless a report is filed for that person by an irrigation district under subsection E of this section or by another person in a form acceptable to the director.

2. Uses groundwater which is transported from an active management area.

3. Is an individual user subject to a municipal conservation requirement for appropriate conservation measures included in a management plan adopted by the director pursuant to article 9 of this chapter.

4. Withdraws groundwater for transportation to an initial active management area pursuant to article 8.1 of this chapter.

5. Withdraws water from a well in the Santa Cruz active management area or who uses water, other than stored water, withdrawn from a non-exempt well in the Santa Cruz active management area.

6. BEGINNING JANUARY 1, 2010, WITHDRAWS WATER FROM AN EXEMPT WELL IN AN ACTIVE MANAGEMENT AREA.

C. UNTIL JANUARY 1, 2010, persons who withdraw groundwater from exempt wells ARE EXEMPT FROM THE RECORD KEEPING AND REPORTING REQUIREMENTS OF THIS SECTION. ~~and~~ Non-irrigation customers of cities, towns, private water companies and irrigation districts, except customers receiving water pursuant to a permit, are exempt from the record keeping and reporting requirements of this section for such water.

D. A person who owns or leases an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the record keeping and reporting requirements of this section for the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.

2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is

1 appurtenant to irrigation acres that are exempt from irrigation water duties
2 pursuant to section 45-563.02.

3 3. Groundwater is withdrawn from land that is both owned by the owner
4 of the irrigation grandfathered right and contiguous to the land to which the
5 irrigation grandfathered right is appurtenant and delivered for use pursuant
6 to either a service area right pursuant to article 6 of this chapter or a
7 grandfathered groundwater right other than an irrigation grandfathered right
8 that is appurtenant to irrigation acres that are exempt from irrigation water
9 duties pursuant to section 45-563.02.

10 E. An irrigation district which delivers and distributes groundwater
11 in an active management area may file an annual report with the director for
12 each person who holds an irrigation grandfathered right appurtenant to
13 irrigation acres within the service area of the irrigation district, if the
14 irrigation district delivers all the water used on the person's irrigation
15 acres. If an irrigation district files an annual report for such a person,
16 the irrigation district shall report the following information for each such
17 person:

18 1. The name of the person and the certificate number of the person's
19 irrigation grandfathered right.

20 2. The quantity of groundwater, if any, delivered during the calendar
21 year.

22 F. Persons who are required to report under subsection B, paragraph 1
23 of this section and who withdraw groundwater during the calendar year in an
24 active management area shall report the following information for each well:

25 1. The registration number and location of the well.

26 2. The quantity of groundwater withdrawn from the well during the
27 calendar year. A person who, under section 45-604, subsection B, is not
28 required to use and does not use a water measuring device to measure
29 withdrawals made pursuant to a type 2 non-irrigation grandfathered right or a
30 groundwater withdrawal permit shall estimate the quantity of groundwater
31 withdrawn pursuant to the grandfathered right or withdrawal permit.

32 3. The quantity of fuel or electricity consumed by the pump during the
33 calendar year.

34 4. The uses to which the groundwater was applied or the persons to
35 whom the groundwater was delivered during the calendar year.

36 G. Persons who are required to report under subsection B, paragraph 1
37 of this section and who use groundwater during the calendar year in an active
38 management area and persons who are required to report under subsection B,
39 paragraph 2 of this section shall report the following information:

40 1. The source of the groundwater, including:

41 (a) The name of the person from whom the groundwater was obtained.

42 (b) The registration number and location of the well, if known.

43 2. The quantity of groundwater used during the calendar year.

44 3. The specific uses to which the groundwater was applied during the
45 calendar year.

1 H. Persons who are required to report under subsection B, paragraph 4
2 of this section and who transport groundwater during the calendar year to an
3 initial active management area under article 8.1 of this chapter shall report
4 the following information:

5 1. The registration number and location of each well.

6 2. The quantity of groundwater withdrawn from each well during the
7 calendar year.

8 3. The quantity of groundwater transported during the calendar year to
9 an initial active management area.

10 4. The quantity of groundwater that was withdrawn during the calendar
11 year and that was not transported to an initial active management area and
12 the uses to which the groundwater was applied.

13 5. The quantity of fuel or electricity consumed by each pump during
14 the calendar year.

15 6. The uses to which the groundwater was applied or the persons to
16 whom the groundwater was delivered during the calendar year.

17 I. Persons who are required to report under subsection B, paragraph 1
18 of this section and who neither withdraw nor use groundwater during the
19 calendar year shall report the following information:

20 1. The fact that no groundwater was withdrawn or used during the
21 calendar year.

22 2. The registration number and location of each well, if any.

23 J. Persons who are required to report under subsection B, paragraph 5
24 of this section and who withdraw water from a non-exempt well in the Santa
25 Cruz active management area during the calendar year AND, BEGINNING JANUARY
26 1, 2010, PERSONS WHO ARE REQUIRED TO REPORT UNDER SUBSECTION B, PARAGRAPH 6
27 OF THIS SECTION AND WHO WITHDRAW WATER FROM AN EXEMPT WELL IN AN ACTIVE
28 MANAGEMENT AREA shall report the following information:

29 1. The registration number and location of the well.

30 2. The quantity of water, by type, withdrawn from the well during the
31 calendar year.

32 3. The quantity of fuel or electricity consumed by the pump during the
33 calendar year.

34 4. The uses to which the water was applied or the persons to whom the
35 water was delivered during the calendar year.

36 5. FOR PERSONS WHO WITHDRAW WATER FROM AN EXEMPT WELL IN AN ACTIVE
37 MANAGEMENT AREA, INFORMATION SHALL BE COLLECTED AND MAINTAINED ON A MONTHLY
38 BASIS AND FILED WITH THE DIRECTOR.

39 K. Persons who are required to report under subsection B, paragraph 5
40 of this section and who use water withdrawn from a non-exempt well in the
41 Santa Cruz active management area during the calendar year shall report the
42 following information:

43 1. The source of the water, including:

44 (a) The name of the person from whom the water was obtained.

45 (b) The registration number and location of the well, if known.

1 2. The quantity of the water, by type, used during the calendar year.

2 3. The specific uses to which the water was applied during the
3 calendar year.

4 L. If a person both withdraws groundwater in an active management area
5 and uses such water, the person may combine the information required by
6 subsections F and G of this section into one report. If a person both
7 withdraws water, other than stored water, from a non-exempt well in the Santa
8 Cruz active management area and uses such water, the person may combine the
9 information required by subsections J and K of this section into one report.

10 M. The director may require such other information in the report as
11 may be necessary to accomplish the management goals of the applicable active
12 management area.

13 N. Each report shall contain either a sworn statement or a
14 certification, under penalty of perjury, that the information contained in
15 the report is true and correct according to the best belief and knowledge of
16 the person filing the report.

17 O. The annual report shall be maintained on a calendar year basis and
18 shall be filed with the director no later than March 31 of each year for the
19 preceding calendar year. If a person who is required under this section to
20 file an annual report for calendar year 1985 or any subsequent calendar year
21 fails to file a report for the calendar year in question on or before March
22 31 of the following year, the director may assess and collect a penalty of
23 twenty-five dollars for each month or portion of a month that the annual
24 report is delinquent. The total penalty assessed under this subsection shall
25 not exceed one hundred fifty dollars. The director shall deposit, pursuant
26 to sections 35-146 and 35-147, all penalties collected under this subsection
27 in the state general fund.

28 P. The records and reports required to be kept and filed under this
29 section shall be in such form as the director prescribes. The director shall
30 prepare blank forms and distribute them on a timely schedule throughout each
31 active management area and furnish them upon request. Failure to receive or
32 obtain the forms does not relieve any person from keeping the required
33 records or making any required report. The director shall cooperate with
34 cities and towns, private water companies and irrigation districts in
35 establishing the form of the records and reports to be kept and filed by
36 them.

37 Q. THE DIRECTOR SHALL INCLUDE IN THE ANNUAL REPORT OF THE DEPARTMENT A
38 SUMMARY OF THE INFORMATION REPORTED BY PERSONS USING WATER FROM EXEMPT WELLS
39 IN ACTIVE MANAGEMENT AREAS PURSUANT TO SUBSECTION B, PARAGRAPH 6 OF THIS
40 SECTION. THE DIRECTOR'S REPORT SHALL INCLUDE THE NUMBER OF DOMESTIC WELLS
41 AFFECTED, THE AMOUNT OF WATER WITHDRAWN EACH YEAR AND AN ANALYSIS OF THE
42 EFFECT OF GROUNDWATER PUMPING FROM THESE WELLS ON ACHIEVING THE GOAL OF EACH
43 ACTIVE MANAGEMENT AREA.

1 Sec. 4. Section 45-634, Arizona Revised Statutes, is amended to read:

2 45-634. Cease and desist order; temporary cease and desist
 3 order; hearing; penalties; injunctive relief

4 A. Except as provided by subsection B of this section, if the director
 5 has reason to believe that a person is violating or has violated a provision
 6 of this chapter or a permit, rule or order issued or adopted pursuant to this
 7 chapter, the director may give the person written notice that the person may
 8 appear and show cause at an administrative hearing why the person should not
 9 be ordered to cease and desist from the violation.

10 B. If the director finds that a person is constructing or modifying a
 11 well and the person does not hold a well driller's or single well license
 12 pursuant to section 45-595 or has not obtained the necessary authority to
 13 construct or modify the well pursuant to article 7 of this chapter or section
 14 45-596, 45-597, 45-598 or 45-834.01, the director may issue a temporary order
 15 for the person to cease and desist the construction or modification pending
 16 final action by the director pursuant to subsection ~~C~~ D of this section.
 17 The order shall include written notice to the person of the date, time and
 18 place where the person may appear at an administrative hearing to show cause
 19 why the temporary order should be vacated. The hearing shall be held within
 20 fifteen days of the date of the order unless the person consents to a longer
 21 period.

22 C. NOTWITHSTANDING SECTION 45-635, IF THE DIRECTOR HAS REASON TO
 23 BELIEVE THAT A PERSON IS VIOLATING THE LIMITATION ON ANNUAL WATER USE FROM AN
 24 EXEMPT WELL IN AN ACTIVE MANAGEMENT AREA, THE DIRECTOR MAY GIVE THE PERSON A
 25 WRITTEN NOTICE OF A SHOW CAUSE HEARING PURSUANT TO SUBSECTION A OF THIS
 26 SECTION THAT MAY INCLUDE THE FOLLOWING PENALTIES FOR A VIOLATION OF THE
 27 ANNUAL LIMIT ON WITHDRAWALS:

28 1. FIVE HUNDRED DOLLARS FOR EXCESSIVE WATER WITHDRAWALS OF UP TO ONE
 29 ACRE-FOOT PER YEAR.

30 2. ONE THOUSAND FIVE HUNDRED DOLLARS FOR EXCESSIVE WATER WITHDRAWALS
 31 OF MORE THAN ONE ACRE-FOOT PER YEAR UP TO AND INCLUDING THREE ACRE-FEET PER
 32 YEAR.

33 3. FIVE THOUSAND DOLLARS FOR EXCESSIVE WATER WITHDRAWALS OF MORE THAN
 34 THREE ACRE-FEET PER YEAR.

35 ~~C~~ D. The decision and order of the director under subsections A and
 36 B of this section may take such form as the director determines to be
 37 reasonable and appropriate and may include a determination of violation, a
 38 cease and desist order, the recommendation of a civil penalty and an order
 39 directing that positive steps be taken to abate or ameliorate any harm or
 40 damage arising from the violation. The person affected may seek judicial
 41 review of the final decision of the director as provided in section 45-114,
 42 subsection B in the superior court in the county in which the violation is
 43 alleged to have occurred.

1 ~~D.~~ E. If the person continues the violation after the director has
2 issued a final decision and order pursuant to subsection ~~E~~ D of this section
3 or a temporary order pursuant to subsection B of this section, the director
4 may apply for a temporary restraining order or preliminary or permanent
5 injunction from the superior court according to the Arizona rules of civil
6 procedure. A decision to seek injunctive relief does not preclude other
7 forms of relief or enforcement against the violator.
8 ~~E.~~ F. Section 45-114, subsections A and B govern administrative
9 proceedings, rehearing or review and judicial review of final decisions of
10 the director under this section.